



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

NOV 29 2016

Brian G. Svoboda, Esq.
Perkins Coie
700 13th Street, NW, Suite 600
Washington, DC 20005

RE: MUR 6993
Van Hollen for Senate
and Stacey Maud in her official
capacity as treasurer
Rosalyn Levy Jonas

Dear Mr. Svoboda:

On December 21, 2015, the Federal Election Commission ("Commission") notified your clients, Van Hollen for Senate and Stacey Maud in her official capacity as treasurer ("Committee") and Rosalyn Levy Jonas, of a complaint alleging that your clients violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and provided your clients with a copy of the complaint.

After reviewing the allegations contained in the complaint, the response you submitted on behalf of your clients, and publicly available information, the Commission on October 18, 2016, found that there is reason to believe that the Committee violated 52 U.S.C. § 30111(a)(4), a provision of the Act, and 11 C.F.R. § 104.15. In addition, the Commission dismissed the allegation that the Committee violated 52 U.S.C. § 30120(a) and 11 C.F.R. § 110.11(a). Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determinations.

The Commission also found that there is no reason to believe that Rosalyn Levy Jonas violated 52 U.S.C. § 30116(a)(1)(A), and closed the file as to Rosalyn Levy Jonas. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination. The Commission reminds Rosalyn Levy Jonas that the confidentiality provisions of 52 U.S.C. § 30109(a)(12)(A) remain in effect, and that this matter is still open with respect to other respondents. The Commission will notify Rosalyn Levy Jonas when the entire file has been closed.

Please note that that Committee has a legal obligation to preserve all documents, records and materials relating to this matter until such time as the Committee is notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519. In the meantime, for the Committee, this matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 52 U.S.C. § 30109(a)(12)(A) unless the Committee notifies the Commission in writing that it

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wishes the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

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In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement with the Committee in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to the Committee as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that the Committee violated the law. Enclosed is a conciliation agreement for your consideration. The basis of the Commission's civil penalty calculation is set forth below.

If the Committee is interested in engaging in pre-probable cause conciliation, please contact Delbert K. Rigsby, the attorney assigned to this matter, at (202) 694-1650, within seven days of receipt of this letter. During conciliation, the Committee may submit any factual or legal materials that it believes are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if the Committee is not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

We look forward to your response.

On behalf of the Commission,



Matthew S. Petersen
Chairman

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

MUR 6993

Brian G. Svoboda, Esq.

Page 3

Enclosures

Factual and Legal Analysis for Van Hollen for Senate

Factual and Legal Analysis for Rosalyn Levy Jonas

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Van Hollen for Senate and Stacey Maud
in her official capacity as treasurer

MUR 6993

I. INTRODUCTION

This matter was generated by a Complaint filed with the Federal Election Commission.

The Complainant, EMILY's List, alleges that Van Hollen for Senate ("Committee") violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by using information copied from the Complainant's disclosure reports to solicit contributions and by failing to include an appropriate disclaimer on a letter included with the solicitation. The Committee denies the allegations.

As discussed below, the Commission finds reason to believe that the Committee violated 52 U.S.C. § 30111(a)(4) and 11 C.F.R. § 104.15 by using Complainant's contributor information to solicit contributions, and dismisses the allegation that the Committee failed to include a disclaimer on the letter included in the mailing.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

EMILY's List is a non-connected political committee that supports female Democratic candidates who favor the "pro-choice" position on the issue of reproductive rights.¹ The Complainant states that on October 23, 2015, it produced an email comparing two Democratic candidates for the United States Senate in Maryland, Chris Van Hollen and Donna Edwards. The email's text referred to Van Hollen as the Democratic primary election opponent of Edwards, but in a graph later in the email, mislabeled Van Hollen as "(R)" [for Republican]

¹ See <http://www.emilyslist.org/>.

instead of "(D)" [for Democrat].² Complainant states that it sent this communication to a test audience of approximately 5,000 individuals.³ After being notified of the error within minutes of the email's transmission, the Complainant says that it immediately corrected the email.⁴ Complainant states that it communicated with Van Hollen for Senate about the error, and offered to send a corrected version of the original email to the 5,000 recipients, but the Committee declined that offer.⁵

EMILY's List alleges that several days later, some of its donors who appeared on its 2015 monthly disclosure reports notified it that they "received a letter from Rosalyn Levy Jonas accusing [Complainant] of 'deception' and engaging in 'aggressive, misleading tactics' in connection with the [email] communication."⁶ In the letter, attached to the Complaint, Jonas identifies herself as a past Board Chair of NARAL Pro Choice America and a reproductive rights activist in Maryland.⁷ The letter discusses the error that EMILY's List made in the email, provides information about Van Hollen's Democratic credentials, and urges support for Van Hollen in the Democratic primary election.⁸ Complainant alleges that the letter was accompanied by a solicitation form—also attached to the Complaint—for Van Hollen's campaign that appeared on the back side of the Committee's reply envelope.⁹

In support of its allegation that Van Hollen for Senate impermissibly used EMILY's List's contributor information to solicit contributions, Complainant alleges that every individual who reported receiving the letter signed by Jonas is a contributor to EMILY's List and is listed

² Compl. at 1 and Ex. A.

³ Compl. at 1.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 2.

⁷ *Id.*, Ex. B.

⁸ *Id.*

⁹ *Id.* at 3 and Ex. C.

on its disclosure reports, but none are listed as contributors on the Committee's disclosure reports.¹⁰ While acknowledging that the Commission has permitted candidates to use contributor information to correct inaccuracies, Complainant alleges that the letter goes beyond correcting the record because it "praises Van Hollen, bashes his opponent, and inaccurately portrays the EMILY's List email snafu as an intentional act of 'deception,'" and includes a solicitation in the package.¹¹

The Complainant alleges that although the solicitation form on the back of the reply envelope contains a disclaimer, "Paid for by Van Hollen for Senate," the Jonas letter does not contain a required disclaimer.¹²

The Committee denies the Complaint's allegations.¹³ The Committee asserts that in response to the EMILY's List email misidentifying Van Hollen as a Republican, it asked Jonas to write a letter concerning the email confirming the Democratic credentials of Van Hollen.¹⁴ The Committee acknowledges that it mailed the letter and paid for it, as evidenced by the disclaimer on the reply envelope and the appearance of the Committee's address under Jonas's name as the return address on the outer mailing envelope.¹⁵

The Committee asserts that the Complaint provides no facts to support a violation that it used information from Complainant's contributors to solicit contributions because it does not identify the names of Complainant's donors or the number of donors who received the letter.¹⁶ The Committee also asserts that "the context of the letter shows that its purpose was not to raise

¹⁰ *Id.* at 2.

¹¹ *Id.* at 2-3.

¹² *Id.* at 3.

¹³ Resp. at 1.

¹⁴ *Id.*

¹⁵ *Id.* at 1-2.

¹⁶ *Id.* at 2.

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funds, but rather to respond to the misidentification of Representative Van Hollen's party affiliation and to promote his candidacy."¹⁷ Furthermore, the Committee states that the return envelope was included "incidentally" and the letter "generated approximately \$3,000 in contributions."¹⁸

Additionally, the Committee asserts that it complied with the disclaimer provisions because a disclaimer is not required to be on every piece of a multi-piece mailing.¹⁹ The Committee claims that a disclaimer need not appear on the front or cover page as long as it appears within the communication.²⁰

B. Legal Analysis

Political committees are required to file reports with the Commission identifying the names and mailing addresses of contributors.²¹ The Act provides that the Commission shall make reports and statements filed with it available to the public for inspection and copying within 48 hours after receipt.²² Any information copied from such reports or statements, however, "may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes," other than using the name and address of a political committee to solicit contributions from that political committee.²³ "Soliciting contributions" includes soliciting any type of contribution or donation, such as political or charitable contributions.²⁴

¹⁷ *Id.* at 1.

¹⁸ *Id.* at 1-2 n.4.

¹⁹ *Id.* at 2.

²⁰ *Id.*

²¹ 52 U.S.C. § 30104(b)(2)(A) and (b)(3)(A); 11 C.F.R. § 104.8(a).

²² 52 U.S.C. § 30111(a)(4).

²³ *Id.*; see also 11 C.F.R. § 104.15(a).

²⁴ 11 C.F.R. § 104.15(b).

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The Commission, however, has permitted the use of a political committee's contributor information to correct inaccurate information disseminated by that committee.²⁵

Here, the Committee's letter was accompanied by a reply envelope, which solicited contributions for Van Hollen's Senatorial campaign. Complainant alleges that this letter was mailed to some of its contributors, but does not identify the number of its contributors who received it. In its response, the Committee does not deny that it used Complainant's contribution list to solicit contributions; rather, it argues that the "context" and "purpose" of the letter was to respond to misinformation rather than raise funds.²⁶ Nevertheless, the letter was accompanied by a solicitation, and the Committee acknowledges receiving \$3,000 in contributions in response to the solicitation. Based on the available information, it appears that the Committee used contributor information from Complainant's disclosure reports to solicit contributions. Therefore, the Commission finds reason to believe that the Committee violated 52 U.S.C. § 30111(a)(4) and 11 C.F.R. § 104.15.²⁷

The Act and Commission regulations also require a disclaimer on all public communications made by a political committee.²⁸ Public communications include a "mass mailing," which means more than 500 letters of an identical or substantially similar nature within a 30-day period.²⁹ Although the number of letters that Van Hollen for Senate mailed is unknown, the Committee does not assert that it sent fewer than 500.

²⁵ See Advisory Opinion ("AO") 1981-05 (Findley) (Commission permitted a candidate to use information obtained from disclosure reports to mail letters to an opponent's contributors to correct allegedly defamatory statements of the opponent) and AO 1984-02 (Gramm) (Commission permitted a candidate to inform contributors to a committee soliciting contributions on behalf of the candidate without his authorization of the identity of the candidate's authorized committee, but prohibited any solicitation).

²⁶ Resp. at 1-2 n.4.

²⁷ See MUR 6290 (Project Vote) (the Commission found reason to believe that Respondent violated 2 U.S.C. § 438(a)(4) (now 52 U.S.C. § 30111(a)(4)) by using 7,853 contributor names and addresses to solicit contributions that yielded \$4,415 in contributions from the solicitation).

²⁸ 52 U.S.C. § 30120(a); 11 C.F.R. § 110.11(a);

²⁹ 52 U.S.C. § 30101(23); 11 C.F.R. § 100.27.

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The Commission's regulations provide that a communication that would require a disclaimer if distributed separately, that is included in a package of materials, must contain the required disclaimer.³⁰ In this instance, it appears that if the Committee's letter had been distributed separately, it would have required a disclaimer, as it is a public communication that was distributed by a political committee.³¹ However, under the circumstances of this particular case, including the existence of a compliant disclaimer on the solicitation envelope accompanying the Committee's letter, it appears unlikely that the general public would have been misled as to who was responsible for the letter. Therefore, the Commission exercises its prosecutorial discretion and dismisses the disclaimer allegation.³²

³⁰ 11 C.F.R. § 110.11(c)(2)(v).

³¹ See 11 C.F.R. § 110.11(a)(1), (2).

³² See *Heckler v. Chaney*, 470 U.S. 821 (1985).

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Rosalyn Levy Jonas

MUR 6993

I. INTRODUCTION

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This matter was generated by a Complaint filed with the Federal Election Commission. The Complainant, EMILY's List, alleges that Rosalyn Levy Jonas may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by making an excessive contribution to Van Hollen for Senate (the "Committee") by paying for the letter included with a Committee solicitation. Jonas denies the allegation.

As discussed below, the Commission finds no reason to believe that Rosalyn Levy Jonas violated 52 U.S.C. § 30116(a)(1)(A) by making an excessive contribution to the Committee because the Committee confirmed that it paid for the letter, not Jonas.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

EMILY's List is a non-connected political committee that supports female Democratic candidates who favor the "pro-choice" position on the issue of reproductive rights.¹ The Complainant states that on October 23, 2015, it produced an email comparing two Democratic candidates for the United States Senate in Maryland, Chris Van Hollen and Donna Edwards. The email's text referred to Van Hollen as the Democratic primary election opponent of Edwards, but in a graph later in the email, mislabeled Van Hollen as "(R)" [for Republican] instead of "(D)" [for Democrat].² Complainant states that it sent this communication to a test

¹ See <http://www.emilyslist.org/>.

² Compl. at 1 and Ex. A.

audience of approximately 5,000 individuals.³ After being notified of the error within minutes of the email's transmission, the Complainant says that it immediately corrected the email.⁴

Complainant states that it communicated with Van Hollen for Senate about the error, and offered to send a corrected version of the original email to the 5,000 recipients, but the Committee declined that offer.⁵

EMILY's List alleges that several days later, some of its donors who appeared on its 2015 monthly disclosure reports notified it that they "received a letter from Rosalyn Levy Jonas accusing [Complainant] of 'deception' and engaging in 'aggressive, misleading tactics' in connection with the [email] communication."⁶ In the letter, attached to the Complaint, Jonas identifies herself as a past Board Chair of NARAL Pro Choice America and a reproductive rights activist in Maryland.⁷ The letter discusses the error that EMILY's List made in the email, provides information about Van Hollen's Democratic credentials, and urges support for Van Hollen in the Democratic primary election.⁸ Complainant alleges that the letter was accompanied by a solicitation form—also attached to the Complaint—for Van Hollen's campaign that appeared on the back side of the Committee's reply envelope.⁹

³ Compl. at 1.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 2.

⁷ *Id.*, Ex. B.

⁸ *Id.*

⁹ *Id.* at 3 and Ex. C.

The Complaint alleges that if Jonas paid for the letter, then she made an excessive contribution to Van Hollen for Senate because she had already contributed \$2,700 to the Committee.¹⁰

Jonas denies the Complaint's allegations.¹¹ Jonas asserts that in response to the EMILY's List email misidentifying Van Hollen as a Republican, the Committee asked her to write a letter concerning the email confirming the Democratic credentials of Van Hollen.¹² The Committee acknowledges that it mailed the letter and paid for it, as evidenced by the disclaimer on the reply envelope and the appearance of the Committee's address under Jonas's name as the return address on the outer mailing envelope.¹³

B. Legal Analysis

The Act provides limitations on the amount of contributions that persons shall make to any candidate and his authorized political committee with respect to any election for Federal office.¹⁴ For the 2016 election cycle, persons are limited to making a contribution of \$2,700 to a candidate per election for Federal office.¹⁵ If Jonas had paid for the letter, she would have made an excessive contribution to the Committee for the 2016 primary election because she had already made the maximum \$2,700 contribution to the Committee.¹⁶ The Committee, however,

¹⁰ *Id.* at 4 n.4.

¹¹ Resp. at 1.

¹² *Id.*

¹³ *Id.* at 1-2.

¹⁴ 52 U.S.C. § 30116(a)(1)(A) and 11 C.F.R. § 110.1(b).

¹⁵ See 11 C.F.R. § 110.1(b)(1)(iii).

¹⁶ See 52 U.S.C. § 30116(a)(1)(A); Van Hollen for Senate's 2015 April Quarterly Report at 36.

admits that it paid for the letter.¹⁷ Therefore, the Commission finds no reason to believe that Rosalyn Levy Jonas violated 52 U.S.C. § 30116(a)(1)(A).

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